

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5462 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

ODHABHA MUNJABHAI MANEK

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner
Mr. Nigam Shukla, learned Asst.G.P. for the respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 04/11/96

ORAL JUDGMENT :

1. This Special Civil Application is directed against the detention order dated 28-4-96 passed by the District Magistrate, Jamnagar detaining the petitioner under the provisions of Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act'). The detention order was executed on 30-4-96 and since then the petitioner is under detention lodged at

Bhuj Special Prison, Bhuj.

2. The present Special Civil Application was filed on 24-7-96 and on 25-7-96 Rule returnable on 19-8-96 was issued. So far neither any reply has been filed by the respondents nor the affidavit of the detaining authority has been filed.

3. The grounds enclosed with the detention order show that three criminal cases were registered against the petitioner for offences under the IPC Chapter 16 and 17. The detaining authority has also taken into consideration the statements of 3 witnesses against the petitioner's criminal activities. The detaining authority has found that the petitioner is a head strong and dangerous person. The witnesses had requested for withholding their identity to be secret for reasons of their security, being frightened of the petitioner. The detaining authority has expressed that in order to prevent the petitioner from continuing his anti social activities, it was necessary to detain the petitioner and accordingly the detention order has been passed.

4. The detention order has been challenged on more than one grounds. But the learned counsel for the petitioner has kept her arguments confined to the question that even if the allegations and materials against the petitioner are taken to be correct on its face value, it can not be said that a case of breach of public order is made out. At the most it is a case of breach of law and order.

5. For the reasons given in the judgment dated 4-10-96 in Special Civil Application No.3879/96 it is found that the allegations and materials, on the basis of which the detention order has been passed, do not constitute a case of breach of public order and it is at the most a case of breach of law and order. The detention order, therefore, can not be sustained in the eye of law.

6. Accordingly this Special Civil Application is allowed and the impugned detention order dated 28-4-96 passed by the District Magistrate, Jamnagar is hereby quashed and set aside and the petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.

